BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINION.

The opinion of the Circuit Court of Appeals, Eighth Circuit, has not as yet been reported, but appears on page 139 of the Record; the Tax Court opinion is officially reported in 2 T. C. 276 and appears at pages 23-35 in the Record.

II.

JURISDICTION.

The judgment to be reviewed was entered April 24, 1945 (R. 151). Motion for rehearing was filed May 7, 1945 (R. 153). Motion for rehearing was overruled May 11, 1945 (R. 167). Petitioner's motion to stay mandate by reason of intention to file application to the Supreme Court of the United States for writ of certiorari was filed May 21, 1945 (R. 167), and on May 25, 1945, the Circuit Court of Appeals entered an order staying the mandate for thirty days if within said period there was filed with the Clerk of the Court of Appeals a certificate of the Clerk of the Supreme Court that a writ of certiorari had been filed, and in such event the stay was granted until final disposition by the Supreme Court (R. 168).

This Court has authority to grant certiorari by virtue of 28 U. S. C. 347 a (Jud. Code Sec. 240 Amended) and 26 U. S. C. 1141 a (53 Stat. 164).

III.

GROUNDS ON WHICH JURISDICTION IN INVOKED.

1. The case presents a question of prime importance in Federal law as to the interpretation and application of Sec. 22 (a) of the Revenue Act to a business partnership of husband and wife where there was originally no established business and where each worked in the business as to whether all the income of the partnership is taxable to the husband. Sec. 22 (a) of the Revenue Act of 1936 and 1938, 26 U. S. C. Internal Revenue Act, pages 825-1008, is as follows:

> "Sec. 22. **Gross Income.**
>
> (a) General definition.—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *."

The Court taxed all of the income under this Section to the husband in its opinion (R. 139). Petitioner contends that half of the income should be taxed to each partner. This important question as to the taxability of the income received by family working partnerships has not heretofore been passed on by this Court and is a Federal question of far reaching force and importance that should be settled by an authoritative and clear decision by this Court. It is important to this petitioner as well as to every working partnership of members of a family and to the federal government. The question is not at all settled by Lucas v. Earl, 281 U. S. 111, 50 S. Ct. 241, 74 L. Ed. 731,

or by Burnet v. Leininger, 285 U. S. 136, 52 S. Ct. 345, 76 L. Ed. 665. The many divergent opinions of the various circuit courts of appeal where family partnerships are involved lends force to the importance of this Court passing upon this question.

2. The opinion and decision has decided the above important question of law and its application in a way that is not in accord with, and probably untenable under applicable decisions of this Court, and goes far and beyond the import of those decisions when applied to the facts in this case. The decisions referred to are:

Lucas v. Earl, supra;
Burnet v. Leininger, supra;
Helvering v. Horst, 311 U. S. 112, 61 S. Ct. 144, 85 L. Ed. 75;
Helvering v. Clifford, 309 U. S. 331, 60 S. Ct. 544, 84 L. Ed. 788.

3. The decision is in conflict with those of other circuit courts of appeal as to whom the income is taxable under Section 22 (a) of the Revenue Act in the same or similarly related partnerships. The decisions of other circuit courts of appeal referred to are as follows:

Commissioner v. Olds, 60 Fed. (2d) 252 (6th);
Armstrong v. Commissioner, 143 Fed. (2d) 700 (10th);
Champlin v. Commissioner, 71 Fed. (2d) 23 (10th);
Hall v. Burnet, 54 Fed. (2d) 443 (C. C. A. D. C.), certiorari denied 285 U. S. 552;
Rose v. Commissioner, 65 Fed. (2d) 616 (6th);
Humphreys v. Commissioner, 88 Fed. (2d) 430 (2nd);
Commissioner v. Montgomery, 144 Fed. (2d) 313 (5th);
Commissioner v. Giannini, 129 Fed. (2d) 638 (9th);
Kell v. Commissioner, 88 Fed. (2d) 453 (5th);
Bowers v. N. Y. Trust Co., 9 Fed. (2d) 548 (2nd) (decided prior to Lucas v. Earl).

4. The decision is contrary to Article IV, Sec. 1, of the Constitution of the United States in failing to accord full faith and credit to the judgment of the Circuit Court of St. Louis County, Missouri, construing and determining the property rights of the petitioner, and is thereby in conflict with the applicable decisions of this Court in the following cases, among others:

Freuler v. Helvering, 291 U. S. 35, 45, 54 S. Ct. 308, 312, 78 L. Ed. 634;
Blair v. Commissioner, 300 U. S. 5, 101, 81 L. Ed. 465, 469, 57 S. Ct. 330;
Sharp v. Commissioner, 303 U. S. 624, 54 S. Ct. 748, 82 L. Ed. 1087.

IV.

STATEMENT OF THE CASE.

The case involves deficiencies assessed against petitioner by the Commissioner of Internal Revenue for the years 1937, 1938 and 1939, denial of refunds requested by petitioner from the Commissioner for those years, involves an interpretation and application of Section 22 (a) of the Revenue Act, supra, as applied to the working family partnership of petitioner and his wife, and further involves a failure to give full faith and credit to the judgment of the Circuit Court of St. Louis County, Missouri, setting forth the property rights of the partners (R. 105). The other facts in the case have been stated in the preceding petition, page 2 et seq.

V.

SPECIFICATION OF ERRORS.

1. The Court erred in applying the rule in Lucas v. Earl, supra; Burnet v. Leininger, supra, and the general holdings in Helvering v. Horst, supra, and Helvering v. Clifford, supra, to a working partnership of husband and wife, where at the inception of the partnership there was no established business, and in holding that there was no substantial change in petitioner's economic position. Such holding goes far and beyond the intention of Congress in enacting Section 22 (a), supra, and far beyond the purport of the four cases just above cited. The decision is contrary to the following cases in other circuits:

Commissioner v. Olds, 60 Fed. (2d) 252 (6th);
Armstrong v. Commissioner, 143 Fed. (2d) 700 (10th);
Champlin v. Commissioner, 71 Fed. (2d) 23 (10th);
Hall v. Burnet, 54 Fed. (2d) 443 (C. C. A. D. C.), Certiorari denied 285 U. S. 552;
Rose v. Commissioner, 65 Fed. (2d) 616 (6th);
Humphreys v. Commissioner, 88 Fed. (2d) 430 (2nd);
Commissioner v. Montgomery, 144 Fed. (2d) 313 (5th);
Commissioner v. Giannini, 129 Fed. (2d) 638 (9th);
Kell v. Commissioner, 88 Fed. (2d) 453 (5th);
Bowers v. N. Y. Trust Co., 9 Fed. (2d) 548 (2nd) (decided prior to Lucas v. Earl).

2. The Court erred in failing to accord full faith and credit to the judgment of the Circuit Court of St. Louis County, Missouri, which adjudged and determined the property rights and interests of the petitioner, contrary to:

Freuler v. Helvering, 291 U. S. 35, 54 S. Ct. 308, 312, 78 L. Ed. 634;

Blair v. Commissioner, 300 U. S. 5, 81 L. Ed. 465, 469, 57 S. Ct. 330;
Sharp v. Commissioner, 303 U. S. 624, 54 S. Ct. 748, 82 L. Ed. 1087.

3. The Court erred in holding that the various conclusions and questions involved decided by the Tax Court were restricted for their review and binding on them, and is contrary to applicable decisions of this Court holding that such conclusions and questions were questions of law or mixed questions of law and fact and were reviewable.

Helvering v. Tex. Penn Oil Co., 300 U. S. 481, 491, 57 S. Ct. 569, 81 L. Ed. 755;
Helvering v. Ranken, 295 U. S. 123, 131, 79 L. Ed. 343, 55 S. Ct. 732,

and is contrary to the Court's own previous ruling in U. S. v. Pierce, 137 Fed. (2d) 428, 431 (8th Circuit).

4. When the undisputed facts show that there was no established business at the inception of the partnership, and when under Missouri law husband and wife have a right to contract a partnership, as the court held, and when both partners work in the business in their particular fields, the holding by the court in adopting the opinion of the Tax Court that the wife contributed no services to the partnership but merely worked on a salary (R. 32, T. C. opinion) is directly in conflict with the oral and documentary evidence, and such holding by the court in failing to give the partnership contract any force and effect, denies to petitioner the rights to which he was entitled under the contract and the facts, contrary to the Fifth Amendment to the Constitution of the United States, in that petitioner is deprived of his property rights without due process of law.

VI.

ARGUMENT.

1. The importance of an authoritative interpretation and application of Section 22 (a) of the Revenue Act to working partnerships.

In this case there was no established business when the partnership was started, December 15, 1932 (R. 47, 48, 53, 61). The Record shows, pages 98 and 99 (Petitioner's Exhibit 5, R. 91), that beginning December 15, 1932, and ending on December 31, 1933, the first year, the net income from the business was $2,366.31; that the following year the net income was $4,446.26, and that it gradually increased through the years until for 1940 the net income was $19,347.85; that each partner made cash withdrawals as follows:

Calendar Year	To Petitioner Personal	To Cornelia Doll Personal	To Petitioner and Cornelia Doll, Jointly
1934	$ 1,106.31	$ 1,031.63	$ 4,217.69
1935	957.51	1,690.00	2,539.25
1936	188.39	1,963.81	6,218.56
1937	6,119.41	3,395.00	2,502.55
1938	1,672.43	2,396.17	1,783.04
1939	1,736.04	3,333.52	16,462.26
1940	6,726.61	5,197.89	2,691.26
Totals:	$18,506.70	$19,008.02	$36,414.61

These total figures were shown in the judgment rendered by the Circuit Court of St. Louis County, Missouri (R. 107).

The petitioner testified he could not cover the territory of Puerto Rico without help, and formed the partnership (R. 48), and that after the political situation settled down he then went back to Cuba to sell shoes (R. 48).

The evidence showed the activities of the wife in the business in keeping records and books, taking care of correspondence, filing of statements and invoices, writing up orders, and when petitioner was away from home taking care of foreign buyers coming to St. Louis, conducting them to factories, seeing that merchandise was shipped, making reservations for buyers, entertaining them and taking care of them in their home, taking care of the office and spending whatever time was necessary in the office, and securing interpretators when necessary (R. 56, 57, 58, 62, 65). The entertainment and guiding of foreign buyers is an important part of the business of selling foreign buyers for export (R. 66, 70, 71). The petitioner made trips to Cuba and Puerto Rico and sold shoes, sometimes accompanied by his wife, and also sold shoes when he was in St. Louis (R. 48, 55). All of the above shows that there was no established business at the start of the partnership and how it was brought up to its present size.

The holding of the court below in applying Section 22 (a) of the Revenue Act, supra, to these facts was to the effect that there was no substantial change in petitioner's economic position, and therefore all of the income of the partnership was taxable to petitioner, citing Helvering v. Clifford, 309 U. S. 331, 336, and Helvering v. Horst, 311 U. S. 112, 119, on the point that income should be taxed to those who earn it. The court also cited Burnet v. Leininger, 285 U. S. 136, 141, in support of its position. None of these cases, nor do any of the other cases cited by the court, have to do with working partnerships such as in the instant case. In Lucas v. Earl, 281 U. S. 111, the court did not deal with a partnership. Burnet v. Leininger, supra, did not deal with such a partnership as the instant case; Helvering v. Horst, supra, nor Helvering v. Clifford, supra, were not partnership cases, therefore, the application of the general principles applied in those cases in the

light of section 22 (a) of the Revenue Act should not be applied in the manner as was done in the instant case.

The change in petitioner's economic position is so plainly apparent in view of the above facts and figures that to hold otherwise would in effect nullify the numerous legitimate family partnerships now in existence, in the light of income taxation. Legitimate labor in partnerships takes the place of capital, but capital cannot take the place of labor in partnerships of this sort. The Tax Court as well as the Court below erroneously assumed that there was an established business at the inception of the partnership.

The Tax Court as well as the Court below assumed that petitioner's wife just drew a $2400.00 salary. Such assumption is not borne out by the record. She never drew just $200 a month (R. 60, 61); the figures referred to above showed nothing drawn in 1933, only $1,106.31 in 1934, only $857.51 in 1935, only $188.39 in 1936, $6,119.41 in 1937, $1,672.00 in 1938, $1,736.04 in 1939, and $6,726.61 in 1940 (R. 98, 99; Petitioner's Exhibit 5, 91).

Therefore we have a far-reaching and important question of federal law affecting family working partnerships which has never been decided by this Court. The facts in this case are so dissimilar to any of the cases cited by the court below that counsel deems it imperative that this Court take jurisdiction and decide this important question. It is important to the numerous family working partnerships now existent in this country; it is important to the Federal Government; it is important by reason of the many differing opinions of other circuit courts of appeal on the question, to which we will hereafter refer. Just to whom is this income taxable? To the various members of the working partnership, or to just one? Today women hold an important position in the business world and their position is increasing in importance as well as in numbers. Where a man has a good business woman as his wife, such as in this case, what better partner could a man have than

his wife? Yet the decision complained of places a penalty on such actions. Therefore the question assumes still larger importance. The fact that it is of importance and is a serious question and requires clarification and decision by this Court, is evidenced by the unusually large number of decisions cited in the opinion of the court below to support its position and the length of time and serious consideration given the case from the date of its submission, November 14, 1944, until the decision was handed down, April 24, 1945, a little over five months later. This is not a question of evasion of taxes, nor does it involve the technical consideration referred to in Helvering v. Clifford, supra, nor does it involve, as mentioned in that case "niceties of verbiage, art of the scrivener, or the legal paraphernalia or the inventive genius of a lawyer." There is nothing in the instant case that even suggests tax evasion, and therefore all those cases dealing with such matters are beside the point.

For the reasons assigned, it is respectfully urged that this Court take jurisdiction and review the decision of the lower court.

2. The court erred in failing to give full faith and credit to the judgment of the Circuit Court of St. Louis County, Missouri.

The wife of petitioner, **when the Commissioner questioned the partnership**, wanted to know her rights as a wife and as a partner (R. 67, 94), and filed a petition in the Circuit Court of St. Louis County, Missouri, to construe and determine her property rights. The partnership agreement (R. 89, Pet. Exhibit 4) was in evidence in that case as well as the various drawings made by the partners, and their joint drawings, through the years (R. 98, 99). The judgment upheld these (R. 105 et seq.) and the judgment was to the effect that each partner had drawn prac-

tically equal amounts of money through the years; that they had bought a home jointly with partnership funds, and that they were equal partners from the date of the partnership agreement, December 15, 1932. On that latter date there was no established business as we have indicated above, and all the business that was done thereafter was produced by the joint efforts of petitioner and his partner as we have shown above. The judgment of the Circuit Court of St. Louis County adjudicated all of the petitioner's property rights in that partnership, which under Missouri law he had a right to contract with his wife as a partner by pooling what little money he had with the wife's labors, as he stated she was continually working with him (R. 48). The Tax Court, in its decision and opinion (R. 23 et seq.), chose to disregard this as did the opinion of the court below.

Petitioner respectfully contends that such holding is contrary to Freuler v. Helvering, 291 U. S. 35, 45; Blair v. Commissioner, 300 U. S. 5-10; Sharp v. Commissioner, 303 U. S. 624. In all of these cases the court held that the judgment of the state court on property rights must be respected and followed and given full faith and credit under the provisions of Article IV, Section 1 of the Constitution of the United States. In fact, in the Sharp case, this court merely wrote a one paragraph per curiam opinion reversing the judgment of the lower court and citing the above cases in support.

The partnership agreement in question was a pooling of the efforts of both partners, in effect an assignment of the future earnings of the partnership, one-half to each partner, and where the facts are present where each worked, as we have indicated above, and built the business from nothing up to its present size, those property rights as adjudged by the Circuit Court of St. Louis County, Missouri, must be respected under the decisions cited above. The import and effect of these decisions can-

not be evaded by the supertechnical construction of the Tax Court and the court below by merely saying that because petitioner sold the shoes that he earned the income. They have singled out just one of the efforts of one of the partners and given no regard whatsoever to the work and efforts of the other partner. Your petitioner respectfully contends that such an artificial construction is not tenable and especially so when there is no holding of tax evasion or any artificial invention in the case.

For the reasons assigned, it is respectfully urged on this point that this Court take jurisdiction and review the decision below.

3. **The decision is contrary to the decisions of other circuit courts of appeal in the same or similarly related partnerships.**

In the case of Commissioner v. Olds, 60 Fed. (2d) 252 (6th), the taxpayer owned a business and entered into a written agreement to sell each of his three daughters a one-fourth interest—each daughter executed her note to him for $400,000. It was stipulated in the agreement that the business should be conducted in his name or any name chosen, and that he would run the business. The Commissioner taxed all the income to the father. The court held that they had a right to make one of the partners the sole agent to conduct the business and that the contract was proper and had been performed, and that neither Lucas v. Earl, supra, or Burnet v. Leininger, supra, controlled, and that the various members of the partnership should be taxed accordingly and not all of the tax placed on the father.

In Armstrong v. Commissioner, 143 Fed. (2d) 700 (10th), taxpayer and his children and mother were partners. Taxpayer had created a trust and given a five per cent of the partnership interest to the trust with a son and daughter

as beneficiary. The Commissioner assessed all the income to the taxpayer; the court held that all of the income was not taxable to taxpayer and distinguished the case from Helvering v. Clifford, supra.

To the same effect is Champlin v. Commissioner, 71 Fed. (2d) 23 (10th).

To the same effect is Hall v. Burnet, 54 Fed. (2d) 443 (C. C. A. D. C.) (Certiorari denied 285 U. S. 552), involving an assignment of insurance commissions to accrue.

In Rose v. Commissioner, 65 Fed. (2d) 616 (6th), taxpayer executed a trust agreement giving certain interests in his partnership to his wife and daughters. The Commissioner assessed all the income against the taxpayer. The court held that the facts in that case were not governed by Lucas v. Earl, supra, and Burnet v. Leininger, supra, and held that all the tax was not taxable to taxpayer, that there was a conveyance of the property which produced the income.

To the same effect is Humphreys v. Commissioner, 88 Fed. (2d) 430 (2nd). In that case two taxpayers and their wives formed a partnership providing for the sharing of profits and losses. The wives contributed some capital, no labor. The Commissioner assessed the two taxpayers on all of the income. Again the court distinguished it from Lucas v. Earl and Burnet v. Leininger, supra, in spite of the fact that all of the money earned was through the efforts of the two taxpayers.

In Commissioner v. Montgomery, 144 Fed. (2d) 313 (5th), a construction engineer had a contract to provide all materials and to perform all work for the construction of a building. He assigned the contract to a corporation formed with his wife and brother and two children. Again the Commissioner taxed all the income to him instead of the corporation. In that case the court distinguished it

from Lucas v. Earl, Burnet v. Leininger and Helvering v. Horst, as well as Helvering v. Clifford, supra, holding that the work he did was for the corporation and that it was not his personal earnings.

In Commissioner v. Giannini, 129 Fed. (2d) 638 (9th), the compensation of the president of a corporation, which the corporation was prepared to pay him and which he had earned and which the president refused to take, was donated to a university by the corporation. The court held that the president was not subject to the income tax thereon, again distinguishing it from Lucas v. Earl and Helvering v. Horst, supra.

In Kell v. Commissioner, 88 Fed. (2d) 453 (5th), a taxpayer turned over a one-fourth interest in a partnership to his wife and children, and the court followed the Rose case, the Olds case and the Champlin case, supra.

In Bowers v. N. Y. Trust Co., 9 Fed. (2d) 548 (2nd), which was decided prior to the decision in Lucas v. Earl, supra, there was a partnership selling agency who was the selling agent for a large number of cotton mills, part of them owned by the taxpayer. The partners agreed that in consideration of the taxpayer giving up his right under the original contract to sixty per cent of the gross receipts, that the partnership would act as selling agent for three of the mills without compensation, the commissions so earned to be paid to such partner taxpayer or his nominees. The court held that commissions paid to the individual partner for services by the partnership was not income of the partnership.

In many of these cases it will be noticed that the court did not tax the individual who by a particular act actually earned the income, and in effect held that there was a change in the taxpayer's economic position.

Now just what must take place to effect a change in a taxpayer's economic position? That is the question that must be answered in this case, and when the rulings of the other circuit courts of appeal on these points are compared with the ruling and decision in the instant case, then your petitioner respectfully submits that it is time for this Court to once and for all settle the question and assume jurisdiction and hand down an authoritative decision on the point. Is the mere fact that petitioner continued to sell shoes to be held determinative of this whole case? Is all the labor that was performed by the wife to be entirely disregarded? We think not. The labor of the wife, combined with the labor of petitioner, was what brought in the income, and it is to the two individuals that the income should be taxed and not alone to the petitioner.

For reasons assigned, it is respectfully urged that this Court take jurisdiction and review the decision of the court below.

4. The court below should have reviewed questions of law or mixed questions of law and fact appearing in the opinion of the Tax Court.

Petitioner contends that the court erred in holding that their field for review was restricted (R. 151). It seems to be well settled law that in matters of this sort the various conclusions and questions involved are questions of law or mixed questions of law and fact, and petitioner therefore contends that the court was in error in holding that the conclusion reached by the Tax Court was binding on them. In Helvering v. Tex. Penn. Oil Co., 300 U. S. 481, 491, this court held:

> "The ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact. It is to be distinguished from the findings of

> primary evidentiary or substantial facts. It is subject to judicial review and on such review the court may substitute its judgment for that of the Board. Helvering v. Ranken, 295 U. S. 123, 79 L. Ed. 1343, 55 Sup. Ct. 732, UBI, supra."

Even the court below, in one of its own opinions, in the case of U. S. v. Pierce, 137 Fed. (2d) 428, at page 431, held to the same effect. It seems that the court in the last mentioned case and in the instant case has held in opposite ways in the respective cases.

Petitioner contends that the finding and judgment is contrary to and unsupported by the evidence, and he so contended in his assignment of errors in his appeal to the Circuit Court of Appeals (R. 40). It became the duty of the Court below to go into the evidence and review it, and to say whether the evidence supported the findings. There was an unwarranted assumption by the Tax Court and by the Court below that there was an established business at the inception of the partnership. Petitioner's business in Cuba had been abandoned and lost, due to political uprisings (R. 47). The partnership was formed and he then began anew, selling in Puerto Rico (R. 48), and later on, when the political situation settled down, he went back to Cuba to sell shoes (R. 48). The decision assumed that the wife just drew $200 a month. **There is no basis for this, as we have shown previously in our argument,** as the entire evidence is contrary to this conclusion.

Petitioner respectfully contends that the decision of the Tax Court on the matters involved was not binding on the appellate court, and therefore their review was not restricted and they should have given force and effect to the other matters presented in the assignment of errors relating to the facts in the case.

5. The decision violates the Fifth Amendment to the Constitution of the United States, in that petitioner is deprived of his property rights without due process of law.

As previously cited to the Court, the undisputed facts show there was no established business at the inception of the partnership. The decision of the court below (R. 145) admits the right of a husband and wife to contract under Missouri law and to form a partnership. We have previously cited to the Court the pages in the record showing that both parties to the partnership contract worked in the business in their respective fields. It is the contention of petitioner that when such facts as these exist that the holding by the court below in adopting in effect the opinion of the Tax Court that the wife contributed no services to the partnership but worked on a salary (R. 32, T. C. opinion) is directly in conflict with the oral evidence which we have referred to above, and directly in conflict to the documentary evidence which we have referred to above, the documentary evidence being the drawings by the parties during the years in the wife's petition in the Circuit Court of St. Louis County (R. 98, 99) and the judgment of the Circuit Court of St. Louis County (R. 105 et seq.).

Such holding by the court below in failing to give force and effect to the partnership contract when the above facts are in the record, denies petitioner the rights to which he is entitled under the contract, and deprives him of his property and his property rights contrary to the Fifth Amendment to the Constitution of the United States which provides that no person shall be deprived of his property without due process of law. That partnership contract cannot be so lightly discarded: It conferred property rights under the evidence and should be given force and effect, and your petitioner, under the law, has the right to its

benefits, and the lower court should have so accorded him. The holding of the court below in this respect is contrary to many of the decisions in other circuits that we have referred to above as to the respect of property rights.

Such ruling in effect prohibits such contracts as in the instant case because they are afforded no force and effect, and therefore the ruling should not be contenanced and should be reviewed by this Court. This proposition seems so fundamental that it requires no citation of authority.

CONCLUSION.

For the reasons assigned this Court is respectfully requested and urged to take jurisdiction and issue its writ of certiorari as requested in the application for the writ.

Respectfully submitted,

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